PUBLIC PROSECUTOR

v.

AZEMIN SALLEH & ORS.

HIGH COURT MALAYA, SEREMBAN
WAN SULEIMAN J
[CRIMINAL REVISION NO. 2 OF 1982]
9 JULY 1982

CRIMINAL PROCEDURE: *Sentence - Youthful offenders - First offence - Charge of house breaking by night to commit theft - Sentence of imprisonment and fine - Whether appropriate.*

The five accused persons were charged at the Magistrate's Court, Seremban under two separate counts of house breaking by night in order to commit theft. They all pleaded guilty to the charges on 7 June 1982 and the Magistrate after considering the probation reports on 30 June 1982 sentenced each of the accused to 14 days' imprisonment and a fine of RM500 in default 1 month's imprisonment on each charge, the custodial sentence to run concurrently. The learned Magistrate on reflection was of the view that the sentence was inappropriate as all the five accused persons were first offenders and in addition youths and brought this matter to the notice of the Judge stating that they should all be bound over.

Held:

[1] Having perused the probation reports, the Court is in full agreement with the learned Magistrate. Accordingly, the sentence imposed on each of the five accused is hereby set aside.

[2] Accused Nos. 2, 3 & 5 be released on each of them entering into a bond in one surety in the sum of RM100 for a period of 1 year under s. 294 CPC.

[3] As regards accused Nos. 1 and 4 who were below 18 years of age at the time of the commission of the offences charged, the parent or guardian of each of them is ordered under s. 12(1)(d) of the Juvenile Courts Act 1947 (Revised 1972) to execute a bond in the sum of RM100 to exercise proper care and guardianship of the accused for a period of 1 year.

[Order accordingly]

Legislation referred to:
Criminal Procedure Code, s. 294
Juvenile Courts Act 1947 (Revised 1972), s. 12(1)(d)
Penal Code, s. 457

JUDGMENT

Wan Suleiman J:

The persons who are the subject matter of this order of revision were charged under two separate counts of house breaking by night in order to commit theft, an offence punishable under s. 457 of the Penal Code, before the Magistrate, Seremban. On 7 June 1982 they all pleaded guilty to the charges and the learned Magistrate postponed sentence pending probation reports on the accused.

On 30 June 1982, after considering the probation reports, the learned Magistrate sentenced each of the accused to 14 days' imprisonment and a fine of RM500 in default one month's imprisonment on each of the charges, the custodial sentence to run concurrently.

On reflection, the learned Magistrate has expressed the view that the sentence imposed now appear to him to be inappropriate since all the five accused persons are first offenders who are in addition youths. He then very properly brought this matter to my notice, adding that it is his present view that they should all be bound over to be of good behaviour under the proper law.

Having myself perused the probation reports, I must say that I am in full agreement with the learned Magistrate. Accordingly the sentence imposed on each of the five accused by the learned Magistrate is hereby set aside and *in lieu* thereof I order that accused Nos. (2), (3) and (5) be released on each of them entering into a bond in one surety in the sum of RM100 for a period of one year during which they may be called upon by the Court to appear and receive judgment, and in the meantime to keep the peace and be of good behaviour under s. 294 of the Criminal Procedure Code.

As regards accused Nos. (1) and (4) who were below 18 years of age at the time of the commission of the offences charged, the parent or guardian of each of them is ordered under s. 12(1)(d) of the Juvenile Court Act 1947 (Revised 1972) to execute a bond in the sum of RM100 to exercise proper care and guardianship of the accused for a period of one year.

Also found at [1982] CLJ 435